

differences and on the basis that it is non-analogous art, without reliance on claim amendments. Counsel offered to withdraw the amendments to claims 6 and 14, and re-submit the Response to the Final Office Action. The Examiner graciously agreed to consider the Response minus the amendments to the claims. Accordingly, this Response is submitted to the Final Office Action dated December 13, 2002.

In the final Office Action, the examiner rejected claims 6-9, 11, 12, 15 and 17 under 35 U.S.C. 102(b) as being anticipated by Burnham. This rejection is respectfully traversed. Reconsideration of the application in view of the above amendments and the following remarks is requested.

It is well settled that for claims to be held unpatentable under 35 U.S.C. Section 102, the claimed subject matter must be identically disclosed or described by a single reference. There must be no differences between that which is claimed and the disclosure of the reference. In re Kalm, 154 U.S.P.Q. 10, 12 (CCPA 1967). Anticipation requires the presence in the reference of each and every element of the claimed invention arranged as in the claim. Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co., et al., 221 U.S.P.Q. 481, 485, (Fed. Cir. 1984). The reference must "clearly and unequivocally" disclose and describe that which is claimed. In re Arkley, 172 U.S.P.Q. 524, 526 (CCPA 1972). See also RCA Corp. v. Applied Digital Data Systems, Inc., et al., 221 U.S.P.Q. 385, 292 (Fed. Cir. 1984). The cited reference, Burnham, does not meet these requirements.

Burnham does not anticipate the present invention for three reasons. As described in detail below, Burnham's pecan huller is (a) structurally different than applicant's corner cutter; (b) functionally different than applicant's corner cutter; and (c) non-analogous art.

As is apparent from Figure 10, applicant's corner cutter has arcuate first and second blade edges, which are arcuate as viewed from the top plan form view of the cutter body. The present invention provides a device wherein the cutting blades for a convex corner cutter are arcuate on a plane looking down on the cutting blade and also vary in disposition on a plane looking forward on the cutting blade, as seen in Fig. 10. This is not shown in Burnham.

Structurally, the cutting edges of Burnham's pecan huller are not curved in two dimensions. Additionally, Burnham teaches two blades which would tend to intercept; one blade termed a groover and a cutter that is on the end of jaw 12 and a second blade 10 on overhanging jaw 8. Thus, Burnham's pecan huller varies and curves in only one dimension and does not have the same structural relationship of the parts as applicant's corner cutter, which has blades in registration with each other and which vary and curve in at least one dimension and vary in disposition in another dimension.

As shown in Fig. 2 of Burnham, the shapes of the upper jaw 12 and the lower jaw 8 are not similar. The surface of the upper jaw 12 raises at a point 11 whereas the surface of the lower jaw 8, referred to as an "overhanging jaw", is not meant to meet directly or be in registration with the upper jaw 12. The cutting edges of upper jaw 12 and lower (or overhanging) jaw 8 are not in registration with each other and are not of the same shape as viewed from the top view. Because of these distinctions, the pecan huller of Burnham could never function and was not intended as a device to cut a hard brittle material, but rather as a device to shell nuts. There is no way the teachings of the secondary references could be incorporated into Burnham's device to make the device suitable as a corner cutter as taught by the present invention.

Functionally, Burnham's pecan huller does not anticipate applicant's corner cutter as it functions in a totally different way. Burnham's pecan huller could not be used to cut glass or brick materials. It could only be used for its purpose, namely, shelling pecans. Burnham was never intended as a corner cutter and could not function as such. Burnham is not intended to cut corners because it does not have the arcuate curve in the plane of cutting. It just has a curve in the face of contact of the jaws to allow for a pecan to be held in the jaws, but the cutting surface does not curve for the purpose of enabling a cut to be made on a curved line around a corner, as in the present invention.

For these reasons, claims 6-9, 11, 12, 15 and 17 are not anticipated by Burnham.

Claim 10 is rejected under 35 U.S.C. 103(a) as being obvious over Burnham in view of Schwartz. Claim 13 was rejected under 35 U.S.C. 103(a) as being obvious over Burnham in view of Berg. Claim 14 was rejected under 35 U.S.C. 103(a) as being obvious over Burnham in view of Welborn. Claim 17 was rejected under 35 U.S.C. 103(a) as being obvious over Burnham.

At the outset, it is apparent that the shortcomings of the primary Burnham reference are necessarily inherent in the further joint consideration of Burnham in view of the secondary references.

Even when considered in combination, it is apparent that the combination of any one or all of Schwartz, Berg, or Welborn with Burnham would not provide the requisite teaching or suggestion to one skilled in the art required to produce applicant's corner cutter. No combination or construction of Burnham and the secondary references provides the teaching or suggestion of the corner cutter of the invention. Burnham does not teach or suggest a corner cutter having arcuate first and second blade edges, which are arcuate as viewed from the top plan form view of the cutter body and nothing in the secondary references can overcome such a defect. Accordingly, reconsideration and withdrawal of the rejections is respectfully requested.

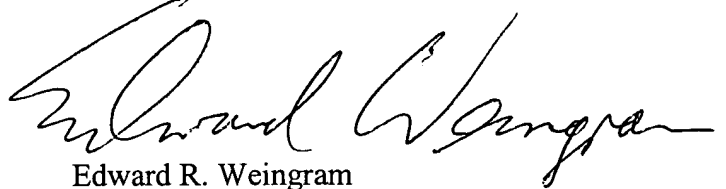
Furthermore, the patentability of the subject matter of dependent claims necessarily must hinge upon the patentability of the independent claim from which it depends. As independent claim 6 is believed to be directed to a novel corner cutter, it is also believed that dependent claims 7-17 are also novel and non-obvious. Accordingly, reconsideration and withdrawal of the present rejections are respectfully requested. Claims 10, 13, 14, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Burnham by itself or in view of additional references. These claims ultimately depend from claim 6. Since claim 6, as set forth above, has been shown to overcome rejection based upon Burnham, claims 10, 13, 14, and 17 are accordingly not obvious in view of Burnham.

Conclusion

None of the references taken either singularly or in combination show or suggest a device for cutting brittle materials which has opposed arcuately shaped blade edges that have opposing movement between an opened and closed position in which the distance between the opposed sections of the blade edges varies along the blade edges when the blade edges are in a closed position.

In view of the foregoing Amendments and the Remarks in support thereof, it is respectfully submitted that this case is in condition for allowance. Favorable action on the merits, including entry of all requested amendments and allowance of all claims is respectfully solicited.

Respectfully submitted,



Edward R. Weingram
Attorney for Applicant
Registration No. 24,493
WEINGRAM & ASSOCIATES, P.C.
P.O. Box 927
Maywood, NJ 07607
Tel: (201) 843-6300
Fax: (201) 843-6495

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